

110.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-6675-2016 (O&M)

Date of decision:24.01.2017

Bharti AXA General Insurance Company Limited ... Appellant

versus

Anant Ram and others Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sanjeev Goyal, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-23230-CII-2016

Prayer in the present application filed under Section 151
CPC is for condonation of delay of 6 days in refiling the appeal.

For the reasons stated in the application, the same is
allowed and the delay of 6 days in refiling the appeal is condoned.

CM-23231-CII-2016

Prayer in the present application filed under Section 5 of
Limitation Act is for condonation of delay of 310 days in filing the
appeal.

The award was passed on 18.08.2015 and the learned
counsel for the applicant-appellant has argued that the certified copy of
the award was applied by the counsel before the Tribunal, the same was

prepared on 01.09.2015 and after receipt of certified copy, the same

was sent to Divisional Office of the appellant-Insurance Company. The Divisional Office further sent it to Regional Office. In the month of November, 2015, the North Legal Office was shifted from Delhi to Bangalore and the entire files were shifted to Bangalore and during the process of shifting, number of cases in which awards of Tribunals were received, could not be traced and consequently, the file of the present case was also misplaced during the shifting.

I have heard learned counsel for the applicant-appellant.

The award was passed on 18.08.2015, whereas North Legal office was shifted from Delhi to Bangalore in November, 2015. The plea that the file of the present case was misplaced during shifting cannot be accepted as no such correspondence has been placed on record which may substantiate this plea. Therefore, this Court does not find any justification in condoning the delay.

Accordingly, the application for condonation of delay stands dismissed.

FAO-6675-2016

To be fair with the appellant, I have heard learned counsel for the appellant on merits also and perused the award passed by the learned Tribunal.

The present appeal has been filed by the appellant-Bharti AXA General Insurance Company Limited against the award dated 18.08.2015 passed by Motor Accident Claims Tribunal, Kurukshetra.

As per award, the claim petition filed by the claimants (respondents

No.1 to 3 herein) under Sections 166 & 140/141 of the Motor Vehicles Act, 1988, was allowed and a compensation of ₹12,13,000/- was awarded to the claimants as well as proforma respondent in equal shares along with interest @ 9% per annum from the date of filing of the claim petition till the date of realization.

Through the instant appeal, the appellant-Insurance Company has challenged the said award dated 18.08.2015.

Learned counsel for the appellant has argued that the impugned award is illegal and erroneous. The Insurance Company has denied the accident and the claim petition was filed by the claimants in collusion with respondents No.4 and 5 so as to grab money from the Insurance Company. The driver of the alleged offending vehicle was not holding valid and effective driving licence at the time of accident and the compensation was awarded on higher side which is contrary to the settled law. The Tribunal has assessed the income of the deceased-Smt. Dayalo as ₹9,000/- per month, whereas respondents No.1 to 3-claimants have not led any evidence to prove the said income of the deceased. Thus merely on the basis of presumption, the Tribunal has taken the notional income of the deceased as ₹9,000/- per month which is apparently on higher side. As per postmortem report, the deceased was 55 years of age, therefore, it is highly unbelievable that a lady of 55 years was earning this much of amount. Even the interest awarded by the Tribunal @ 9% per annum is on higher side. The driving licence issued to respondent No.4-driver-Pardeep Kumar @ Deep

Chand i.e. Ex.P3 was issued by the District Transport Officer, Tuensang, Nagaland and as per the public information dated 01.08.2014 issued by the Government of Nagaland, the driver licence issued on Smart Card through the National Software Sarathi from 30.10.2009, can be viewed/verified through the National portal www.sarathi.nic.in. The issuance of driving licence on booklet has been discontinued in the State and Smart Card licence has been ordered to be continued.

I have heard learned counsel for the appellant.

The Tribunal has formulated the following issues:-

- “1. Whether accident dated 10.3.2014, resulting into death of Smt. Dayalo, took place due to rash and negligent driving of offending vehicle i.e. Three-wheeler bearing registration no.HR-37C-3749, by the respondent no.1, if so, to what effect? OPP
2. If issue no.1 is proved, then to what amount of compensation and from whom the claimants-petitioners are entitled to? OPP
3. Whether the respondent no.1 was not having any valid and effective driving licence at the material time and there was violation of the terms and conditions of the insurance policy and respondent no.3 is not liable to pay any compensation? OPR-3.
4. Relief.”

In support thereof, Anant Ram, claimant-petitioner No.1 has appeared as PW1 and has further examined Smt. Santosh Kumari-an eyewitness to the accident as PW2, whereas the respondent No.2-

The claimants have prayed for compensation on account of death of Smt. Dayalo (wife of claimant/respondent No.1 and mother of claimants/respondents No.2 and 3) in a motor vehicle accident due to rash and negligent driving of three-wheeler bearing registration No.HR-37C-3749 driven by Pardeep Kumar alias Deep Chand-respondent No.4 herein. On the basis of statement of PW1-Anant Kumar-claimant No.1 which was supported by PW2-Santosh Kumari-an alleged eyewitness, respondents-claimants No.1 to 3 were able to prove the accident in question. Accordingly, the Tribunal held that the accident took place due to rash and negligent driving of driver of three-wheeler bearing registration No.HR-37C-3749 driven by Pardeep Kumar alias Deep Chand-respondent No.4 herein and in the said accident, Smt. Dayalo has died due to be injuries received by her.

So far as the validity of driving licence at the time of alleged accident is concerned, the driver tendered into evidence a copy of his driving licence bearing No.18649/TV/T/2010 dated 05.07.2010 which was issued by the District Transport Officer, Tuensang, Nagaland as Ex.P3. The said licence was valid for driving MC, LMV, LTV vehicles and was valid upto 03.12.2016. The appellant-Insurance Company has not led any evidence which may dispute the validity of the said driving licence Ex.P3. As such, it was concluded that the driver was holding a valid driving licence at the time of alleged accident.

So far as the assessment of notional income of the deceased-Smt. Dayalo at ₹9,000/- per month is concerned, PW1-Anant Ram has deposed that at the time of her death, she was about 52 years of age though in the postmortem report, it has been reported that she was 55 years of age. Like any other housewife, the deceased must have been doing all the household jobs like cooking, cleaning, washing etc. and, therefore, she was not less than a skilled person and her notional income has rightly been assessed at ₹9,000/- per month.

Taking into consideration the fact that the notional income of the deceased has been assessed at ₹9,000/- per month and she was 55 years of age, the Tribunal has rightly applied the multiplier as 11. Therefore, the plea as put forward by the counsel for the appellant that the income has been assessed on higher side cannot be accepted.

Once it is proved that the driver was holding a valid driving licence and Smt. Dayalo has died in the accident, this Court finds no illegality in the impugned award whereby the appellant-Insurance Company and respondents No.4 and 5 have been jointly and severally held liable to pay the amount of compensation to the respondents-claimants No.1 to 3 and the appellant-Insurance Company has been held entitled to indemnify the insured.

There is no substance in the present appeal and it is, accordingly, dismissed.

CM-23232-C-2016

Prayer in the application filed under Order 41 Rule 5 CPC

read with Section 151 CPC is for staying the execution of the award dated 18.08.2015 passed by learned MACT, Kurukshetra.

Since the main appeal has been dismissed by this Court, the application has become infructuous and is dismissed as such.

(HARI PAL VERMA)
JUDGE

24.01.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No